

## **II. Remarks**

Reconsideration and re-examination of this application in view of the above amendments and the following remarks is herein respectfully requested.

After entering this amendment, claims 34-48 remain pending in the application. Claims 34-42, 44, 46, and 48 have been amended. Claims 1-17 were previously cancelled. Claims 18-24 and 26-33 are hereby cancelled, as the United States Patent and Trademark Office has withdrawn those claims as being drawn to a non-elected invention. Claims 25 and 33 have been canceled. Claims 34-36, 38, 40-43, 44, 46, and 48 have been amended to depend from claims 37 or 39. Claim 38 has been amended to correct the obvious typographical error of "mas" to read "mass."

### **A. Information Disclosure Statement**

The information disclosure statement filed 10-29-08 was signed off by the Examiner, but indicated that there was no date for the Schwerdtfeger reference. Applicants have submitted a new IDS with the date for the Schwerdtfeger reference as 1992.

### **B. Claim Objections**

Claim 8 was objected to under 37 CFR § 1.75(d)(1) and MPEP § 608.01(o) for failing to provide an antecedent basis in the specification for several terms or phrases which will be discussed in turn below:

#### **i. The ratio of claim 33.**

Claim 33 has been canceled. Claims 37 and 39 were amended to include all of the limitations of claim 33. The ratio of "from 0.14 to 0.2" appears in the specification at paragraph 10 (see Attachment A filed with Preliminary Amendment of June 15, 2005).

#### **ii. Support for sintered and fused materials of claim 37.**

Claim 37 recites "sintered MgO, fused magnesia, sintered dolomite, and fused dolomite." The terms "sintered MgO", "fused magnesia," "sintered dolomite, and "fused dolomite" have an antecedent basis in the specification at for example paragraph 10 (see Attachment A filed with Preliminary Amendment of June 15, 2005).

**iii. The density of claim 41.**

The phrase “overall density of from 2.5 to 3.2 g/cm<sup>3</sup>” has an antecedent basis in the specification in Table 2, page 5, where the term “overall density” is recited with various overall density measurements from the example (see Attachment A filed with Preliminary Amendment of June 15, 2005).

**iv. The porosity of claims 42 and 43.**

The phrases “porosity of from 12 to 25% by volume” and “porosity of from 14 to 23% by volume” have an antecedent basis in the specification in Table 2, page 5, where the term “porosity” is recited with various overall porosity measurements from the example (see Attachment A filed with Preliminary Amendment of June 15, 2005).

**v. The properties of claims 44-48.**

With regard to claims 44 and 45, the phrases “cold compressive strength above 35 MPa, and a cold flexural strength above 2 MPa” and “cold compressive strength above 45 MPa, and a cold flexural strength above 2 MPa” have antecedent bases in the specification in Table 2, page 5, where the terms “cold compressive strength” (“CCF”) and “cold flexural strength” (i.e., “CFS”) are recited with various measurements of those terms from the example (see Attachment A filed with Preliminary Amendment of June 15, 2005). The terms “cold compressive strength” and “cold compressive force” (i.e., “CCF”) are equivalent. The term “cold compressive strength” finds support in the Table 2 of the PCT priority application, PCT/EP2003/10808, in the term KDF which is an abbreviation for Kaltdruckfestigkeit which means “cold compressive strength” or “cold compressive force.”

With regard to claims 46 and 47, the phrases “modulus of elasticity of from 14 to 35 GPa, and a shear modulus of from 6 to 15 GPa” and “modulus of elasticity of from 15 to 32 GPa, and a shear modulus of from 7 to 14 GPa” have antecedent bases in the specification in Table 2, page 5, where the terms “modulus elasticity” and “shear modulus” are recited with various measurements of those terms from the example (see Attachment A filed with Preliminary Amendment of June 15, 2005).

With regard to claim 48, the phrase “thermal shock resistance of greater than 80” has an antecedent basis in the specification in Table 2, page 5, where the term

"TSR" or thermal shock resistance is recited with various TSR measurements from the example (see Attachment A filed with Preliminary Amendment of June 15, 2005).

Accordingly, Applicants respectfully request that the rejection be withdrawn.

**C. Claim Rejections – 35 USC § 102(b) and § 102(b)/103.**

Claims 33-36, 38, 40-48 were rejected under 35 USC § 102(b) as being anticipated by or, in the alternative, under 35 USC § 103(a) as obvious over WO 00/01638.

The applicant acknowledges the Examiner's indication of the allowability of Claims 37 and 39, if rewritten into independent form, including all of the limitations of any base claim and intervening claims. Claims 37 and 39 have been rewritten as independent claims, incorporating the limitations of claim 33. Claim 33 has been canceled. Claims 34-36, 38, 40-43, 44, 46, and 48 have been made dependent on claims 37 or 39. Accordingly, Applicants respectfully request that the rejection be withdrawn.

**Conclusion**

In view of the above amendments and remarks, it is respectfully submitted that the present form of the claims are patentably distinguishable over the art of record and that this application is now in condition for allowance. Such action is respectfully requested.

Respectfully submitted,

February 9, 2009  
\_\_\_\_\_  
Date

/Eric J. Baude/  
\_\_\_\_\_  
Eric J. Baude (Reg. No. 47,413)  
ATTORNEYS FOR APPLICANTS

BRINKS HOFER GILSON & LIONE  
524 SOUTH MAIN STREET  
SUITE 200  
ANN ARBOR, MI 48104-2921  
(734) 302-6010

EJB/dms